

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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BOARD OF TRUSTEES, POPLAR  
ELEMENTARY DISTRICTS NO. 9 AND 9B,

Appellant,

vs.

BOARD OF TRUSTEES, FROID  
SCHOOL DISTRICTS NO. 65 AND  
65E, AND ROOSEVELT COUNTY  
TRANSPORTATION COMMITTEE,

Respondent.

OSPI 243-94

DECISION AND ORDER

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PROCEDURAL HISTORY

This is an appeal by Poplar Elementary District (hereinafter Poplar) of an August, 1994, vote by the Roosevelt County Transportation Committee (hereinafter "RCTC" or "the Committee") to approve the Froid Elementary and High School Districts' (hereinafter Froid) request to extend a bus route further into Poplar territory. Froid has operated a bus within the boundaries of the Poplar district for at least twenty-five years. The August, 1994, request was for an additional "feeder route" that would pick up students from seven families and connect with the existing Froid school bus.

Froid asked Poplar to allow the additional route. Poplar refused and the matter was put on the RCTC's August agenda. Froid's and Poplar's representatives on the RCTC attended the

meeting and offered information. Parents were also allowed to participate and they requested that the RCTC amend Froid's transportation service area (TSA) and approve the "feeder route." (Minutes of RCTC August 5, 1994, meeting).

This meeting was not a hearing. It was a regularly scheduled meeting of the Committee. Among a variety of actions, the Committee approved the Froid route into Poplar over the objection of the Poplar District by a vote of 6-2. Froid has operated the route since the fall of 1994.

Poplar appealed the RCTC's route approval to this Superintendent, naming both Froid and the RCTC as respondents. Poplar also filed for a Temporary Restraining Order (TRO) in the Seventeenth Judicial District, Roosevelt County, to prevent Froid from operating its bus route into Poplar. On August 30, 1994, the Seventeenth District denied the TRO. On January 18, 1995, the Court denied the injunction.

#### STANDARD OF REVIEW

An administrative forum has power to determine initially whether it has jurisdiction. Wilson v. Dept of Public Service Reg. 260 Mont. 167, 171, 858 P.2d 368, 370 (1993).

#### ORDER

The Poplar School District's appeal is dismissed for lack of jurisdiction.

#### Memorandum

A. No jurisdiction. No hearing was held in this matter therefore there are no findings of fact or conclusions of law to

be reviewed. Nor does Poplar does want the matter remanded for hearing. Poplar's appeal is a request that this Superintendent review and overturn a vote of the RCTC. There is no administrative process for this because the State Superintendent does not have veto power over voted decisions of board of trustees or transportation committees.

Poplar is correct, however, that under current law the RCTC could not approve the feeder route. To provide some assistance to transportation committees and school districts this Memo discusses § 20-10-126, MCA, which became effective July 1, 1995. The statute precludes the RCTC from approving Froid's bus route within Poplar. Without transportation committee approval of its route a district cannot receive state and county transportation reimbursement.

B. Section 20-10-126, MCA. This controversy took place during school year 1994-95. Section 20-10-126, which went into effect in July, 1995, will control what routes the RCTC approves in the future. The following discussion is offered to help transportation committees apply the statute. This discussion applies prospectively only. It does not effect the 1994-95 or 1995-96 school years.

Section 20-10-126 (2) states:

"A district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils."

This statute precludes a transportation committee from approving a bus route for District A that extends into District B's TSA unless District B has a written agreement with District A.

By definition, a district's TSA is "the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program." Section 20-10-101 (6). By operation of statute, a district's geographic area of responsibility cannot be smaller than its district boundaries because if the district provides transportation it must do so for all eligible trustees in the district. Section 20-10-121 (1). By agreement of the districts a transportation committee can expand one district's TSA to include another district's territory. In that case a bus route may be outside of a district's territory but within its TSA and it can be an approved route.

The question then becomes does § 20-10-126 (1) mean a transportation committee can extend District A's TSA beyond its district boundaries into District B without District B's approval? Statutes are applied to give effect to legislative intent. The primary source for determining legislative intent is the plain language of the statute. Section 20-10-126 has to be applied to harmonize with §§ 20-10-101 and 121. One rule of statutory construction is that the Legislature intends to give meaning to all statutes if possible. Vita-Rich Dairy, Inc. v. Dept of Bus. Reg., 170 Mont. 341, 348, 553 P.2d 980 (1976).

To give effect to all statutes § 20-10-126 (1) has to mean that a transportation committee may extend District A's TSA beyond its boundaries only if the other effected district or districts agree. A transportation committee can extend District A's TSA into District B's boundaries if it concludes that the extenuating circumstances of § 20-10-126(1), MCA, apply and District A and District B both agree to the inclusion of District B territory in District A's TSA.

In enacting § 20-10-126 the Legislature anticipated that districts would act reasonably and cooperate with each other. District B should not unreasonably refuse to allow District A's TSA to be extended into District B. If District B wants to stop District A's TSA at District B's boundaries, however, it can do so. If District B does not want the transportation committee to approve a route operated by District A within District B, District B can prevent the approval.

Transportation committees have the authority to approve or disapprove district bus routes for transportation reimbursement purposes but that authority is subject to some statutory limits. Section 20-10-132 (1)(b) and ARM 10.7.112. One statutory limit is § 20-10-126 (2). By operation of statute, the transportation committee cannot approve District A's bus route within District B if District B opposes it. This means that Froid cannot receive state and county transportation reimbursement for its route within the Poplar District because Poplar does not allow Froid to operate a route within its district boundaries.

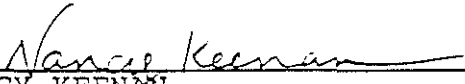
The effect of approval of a bus route means the route may be eligible for state and county transportation reimbursement. Sections 20-10-104, 20-10-141, 20-10-145 and 20-1-146. (The route also has to be operated in a manner that complies with transportation laws. Section 20-10-104.) The effect of no approval is that the route cannot be claimed for transportation reimbursement -- no approval, no money.

The transportation committee has the power to, and in some cases must, withhold approval. If the district operates the route anyway, this Superintendent and the County must withhold transportation reimbursement from the district for the route. Claims for reimbursement are submitted to the State Superintendent by County Superintendents. § 20-10-145 (2) and ARM 10.7.104. If a district operates a bus route that is not approved by a transportation committee it cannot claim reimbursement. If the County Superintendent receives such a claim he/she cannot submit it to the State Superintendent. A school district that knowingly operates school buses without approval of the route by a county transportation committee will not receive any state or county reimbursement for that route until the violation is corrected. See 39 Ag. Op. No. 57 (1982).

Transportation committees and county superintendents should also note that if District A's route in District B is approved (because District B has no objection to the TSA) it does not follow that residents of district B automatically become eligible transportees of District A. If District A is operating an

approved bus route that picks up non-resident students it has to have an attendance agreement with the district of residence (§§ 20-5-320 and 322) to include the nonresident students as eligible transportees for reimbursement purposes.

DATED this 20 day of June, 1996.

  
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NANCY KEENAN

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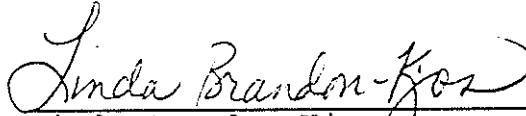
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 20<sup>th</sup> day of June, 1996, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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